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Ulrich Emmerling

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BAKER BOTTS L.L.P.

PATENT DEPARTMENT

98 SAN JACINTO BLVD., SUITE 1500

AUSTIN, TX 78701-4039

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ULRICH EMMERLING, MATTHAIAS HUSCHENBETT,
JOHN MARTIN EVANS, and TORSTEN THIEL

Appeal 2008-1391
Application 10/603,209
Technology Center 2100

Decided: September 18, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON,
and JEAN R. HOMERE , *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 17. We have jurisdiction under 35 U.S.C. § 6(b).

As best representative of the disclosed and claimed invention,
independent claim 11 is reproduced below:

11. Method for authenticating a vehicle to at a key comprising the steps of:

a) transmitting an item of information unidirectionally between the vehicle and the key,

b) calculating a computation result in the key from parts of the transmitted information,

c) comparing the calculated computation result with a computation result transferred with the information, wherein the comparing is in the key, and

d) authenticating the vehicle if there is a match between the calculated computation result and the transferred computation result, and declaring the computation result as invalid for further transmissions.

The following references are relied on by the Examiner:

Stellberger	US 4,509,093	Apr. 2, 1985
Kocher	US 6,381,699 B2	Apr. 30, 2002

Claims 1, 2, and 11, stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stellberger. The remaining claims on appeal stand rejected under 35 U.S.C. § 103. Therefore, as evidence of obviousness as to claims 3 through 10, and 12 through 17, the Examiner relies upon Stellberger in view of Kocher.

Rather than repeat verbatim the positions of the Appellants and the Examiner, we refer to the Brief and Reply Brief for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons set forth by the Examiner in the Answer, as expanded upon here, we sustain the rejection of the noted claims under 35 U.S.C. § 102 and the separate rejection of the remaining claims on appeal under 35 U.S.C. § 103. Appellants argue common features among independent claims 1 and 11 together in the Brief and Reply Brief. Moreover, no arguments are presented as to the second stated rejection, that of various claims rejected under 35 U.S.C. § 103, but instead rely for patentability upon arguments presented with respect to the first stated rejection of independent claims 1 and 11 under 35 U.S.C. § 102. In a corresponding manner, no arguments are presented as to dependent claim 2, rejected under the first stated rejection under 35 U.S.C. § 102.

Among the arguments presented at pages 5 and 6 of the principal Brief on appeal, the focus appears to be upon the bidirectional transfer of information in Stellberger, thus implying to the reader that the unidirectional transmission of information in independent claims 1 and 11 on appeal is distinguished. As the Examiner correctly argues in the responsive arguments portion of the Answer, we find this an unpersuasive distinction since the nature of the method steps or clauses in these claims on appeal does not exclude the bidirectionality among the teachings in Stellberger. That a reference teaches more than what is claimed does not invalidate a rejection under 35 U.S.C. § 102 for what is claimed.

As to the Reply Brief, Appellants improperly repeat the same remarks at pages 5 and 6 of the Reply Brief that were presented to us in the principal Brief on Appeal. The subsequent discussion relating to explicit anticipation

as well as the discussion of implied anticipation is rendered moot from two perspectives. The first perspective is that the Examiner attempted in much of the remarks or responsive arguments portion of the Answer to emphasize that the alleged mixing of steps between the embodiments in Stellberger's figures 2 and 3 was still proper since it was from one reference, which was required for a valid rejection within 35 U.S.C. § 102. Even if we give credence to Appellants' positions that it is improper for the Examiner to mix steps from two different embodiments in these two figures, our discussion, *infra*, will clarify what the reference actually teaches. Secondly, Appellants' state at page 9 of the Reply Brief that the Examiner improperly relies upon the teaching at column 4, lines 24 through 27, and that this teaching only applies to the so-called second method associated with figure 3. Our understanding of the teaching of this reference leads us to believe otherwise.

The column 4 material noted above that was relied upon by the Examiner was from the Summary of the Invention in Stellberger and indicated that a comparison phase between the output signals produced in plural working cycles is made alternatively in the key part and then in the lock part. The discussion continued indicating that the interaction between the lock and the key occurs in consecutive working cycles in a so-called mirror-symmetrical manner where, at one time it is the key part which is active, and at another time it is a lock part which is actively testing the incoming signals from the other element as to their compatibility.

The discussion of figure 2, showing Stellberger's first method or embodiment, begins at the middle of column 6. The modifying teachings in the middle paragraph of column 8 plainly make use of this mirror-

symmetrical capability in the manner just indicated. It is emphasized that this occurs within the figure 2 embodiment. Thus, the artisan would understand that the roles of the key and the lock are alternatively reversed.

The corresponding discussion associated with the second method or embodiment in Stellberger's figure 3 begins at the bottom of column 8 and contains a corresponding teaching generally in most of column 10 regarding this mirror-symmetrical fashion.

Thus, Appellants' most persuasive argument that appears to us between the Brief and Reply Brief is found at the top of page 10 of the Reply Brief and asserts, generally, that Stellberger's figures 2 and 3 embodiments teach to perform the comparison in the transmitting object always and never in the receiving unit as required by claims 1 and 11 on appeal. Because the mirror-symmetrical capability applies to both the figure 2 and 3 embodiments, the respective roles of the two elements, the key and the lock, are respectively reversed according to various time sequences or phases that may be applicable for the activation or the use of these elements within both figures 2 and 3. In this light, therefore, the artisan would understand that not only do the claims not exclude this capability, the comparison that is alleged to be a distinguishing feature that occurs in the receiving unit actually does occur within this alternate transmission-reception dialog that occurs between the lock and the key in both the figure 2 and figure 3 embodiments, such as to meet the requirement that the comparison occur in the receiving unit in independent claims 1 and 11 on appeal.

In view of the foregoing, we sustain the Examiner's decision of rejecting various claims under 35 U.S.C. § 102 and 35 U.S.C. § since Appellants have not presented persuasive arguments of any error in the Examiner's positions in the Answer. Therefore, we affirm the Examiner's decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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